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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 365

CANTON COMPANY OF BALTIMORE,
Appellant,

v.

COMPTROLLER OF THE TREASURY,
RETAIL SALES TAX DIVISION,
STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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ARGUMENT

Appellee's description, at p. 8 of the Motion to Dismiss or Affirm, of *Canton Railroad Co. v. Rogan*, 340 U.S. 511, may mislead this Honorable Court into believing that the rentals presently involved were also the subject of the holding in that case. Such is demonstrably not the case. Canton Company of Baltimore, Appellant here, is the lessor of the bulk unloading ore pier cranes with which this case concerns itself. Canton Railroad Company is a subsidiary of Canton Company of Baltimore, and, in 1931, when the

lease here involved was entered, was lessee of the ore pier itself. It joined the 1931 lease to grant to the stevedore who leased the cranes from Canton Company of Baltimore the right and privilege to enter the ore pier to maintain and operate the cranes. The payments under the lease to Canton Railroad Company were for the easement in the property on which the cranes were situated, not for the cranes themselves. All the foregoing facts are established by uncontradicted evidence in the present case. See page 8A of Appendix A to the Jurisdictional Statement.

In any event, Appellee's confusion of rentals for instrumentalities of commerce with rentals for the place where they are located does nothing to bring the present case within the scope of the holding in *Canton Railroad Co. v. Rogan, supra*. That case concerned a franchise tax on Canton Railroad Company, the lessor. This Honorable Court emphasized, at 340 U.S. 515, that Canton Railroad Company "does not itself do the stevedoring work".

The present case, on the other hand, involves an excise tax on the stevedore, for which the incidence was the stevedore's continuation of possession of the bulk unloading cranes. The facts, thus, bring the case within the holdings in *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, and *Puget Sound Stevedoring Co. v. State Tax Comm.*, 302 U.S. 90.

Respectfully submitted,

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